

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

LINO NSHIMBA,

No. C 10-2982 RS

**Plaintiff,**

## **ORDER DISMISSING ACTION**

## LOWE'S HOME IMPROVEMENT WAREHOUSE, INC., et al.

## Defendants.

19 The assigned magistrate judge issued a Report and Recommendation herein on November 3,  
20 2011. The time for objecting to the Report and Recommendation has elapsed, and no objections  
21 have been filed. Based on the findings and for the reasons set forth in the Report and  
22 Recommendation, which are hereby adopted, terminating sanctions are warranted. The record,  
23 however, does not permit a determination as to the extent to which, if any, plaintiff, as opposed to  
24 his counsel, is at fault for the failures to comply with discovery obligations. Accordingly, in lieu of  
25 the entry of default judgment against plaintiff under Rule 37(b)(2)(A)(vi) of the Federal Rules of  
26 Civil Procedure, this action is hereby dismissed, without prejudice, pursuant to Rule 37(b)(2)(A)(v).

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ORDER

1           The Clerk shall close the file. The assigned magistrate judge retains jurisdiction to refer  
2 plaintiff's counsel to the Discipline Oversight Committee based on conduct occurring in connection  
3 with the matters referred for his adjudication, and may do so in the exercise of discretion.

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5 IT IS SO ORDERED.

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7 Dated: 12/9/11

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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE